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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ramtech Modular Design, Inc.

File: B-243700

Date: August 6, 1991

Henry E. Steck, Esq., Harrison & Steck, P.C., for the protester.

Lester Edelman, Esq., Department of the Army, for the agency.
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DIGEST

1. A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that, based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical factors and price most advantageous to the government.

2. An agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer since the offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation.

3. Where protester changed its structural design for modular office facility in its best and final offer in response to clarification requests, but failed to provide either a descriptive narrative for its new design or the necessary calculations on wind and seismic loads as required by the solicitation, the protester's proposal was properly downgraded in that area.

DECISION

Ramtech Modular Design, Inc. protests the award of a contract to PBS Building Systems, Inc. under request for proposals (RFP) No. DACA45-90-R-0097, issued by the U.S. Army Corps of Engineers, Omaha District, for the design, manufacture, and erection of a temporary-relocatable modular office facility at

Edwards Air Force Base, California. The facility is needed to support the B2 Bomber program. Ramtech principally disagrees with the evaluation of its technical proposal and asserts that the Army failed to conduct meaningful discussions with Ramtech and unreasonably downgraded Ramtech's technical proposal in certain areas. Ramtech also contends that its price was more advantageous than PBS's price.

We deny the protest.

The RFP was issued on October 30, 1990, and contemplated the award of a firm, fixed-price contract for a temporary-relocatable modular facility. Award was to be made on the basis of the most advantageous offer based on four major evaluation factors listed in the solicitation in descending order of importance--technical data, project schedule, management proposal, and price. The RFP provided that technical data, management proposal, and project schedule would be point-scored.^{1/} The technical data factor consisted of seven subfactors listed in descending order of importance: electrical design, mechanical design, architectural design, structural design, water and waste water design, site design, and civil design. Price was not to be point-scored, but it was to be evaluated to determine whether the offeror had a clear understanding of the project requirements, and to assess the reasonableness and affordability of the offeror's proposal. With respect to the price evaluation, the RFP required offerors to submit offers providing a total cost for four separate plans involving various purchase, lease, and removal scenarios.

The first scenario represented the cost of having the building erected, plus the cost of leasing the building for 5 years. The second scenario represented the cost of having the building erected, plus the average purchase cost over the 5-year contract period. The third scenario represented the cost of having the building disassembled and removed. The fourth scenario represented the cost of having the building disassembled and placed in government storage.

Three offers were received by the closing date of December 13, 1990. After the initial evaluation, all offerors were determined to be technically acceptable and within the competitive range. Ramtech received an initial technical point score of 1,433 out of a possible 2,360, and PBS received

^{1/} The technical data factor consisted of the design for the modular facility and was the most important element of the solicitation considered by the evaluators. Half (1,180) of the 2,360 possible points a proposal could receive pertained to the technical data factor.

1,313 points. Clarification requests were sent to all offerors and each was requested to submit a best and final offer (BAFO) by January 23, 1991.

Upon completion of the evaluation of BAFOs, the proposals were reevaluated and rescored. The following are the final rankings and scores of the Ramtech and PBS proposals:

	Ramtech	PBS
Technical	613	817
Schedule	460	340
Management	360	314
Total	1,433	1,471

The Source Selection Evaluation Board (SSEB) also evaluated the price proposals from the three offerors after receiving initial and BAFO proposals. The BAFO prices for Ramtech and PBS were as follows:

Scenario	Ramtech	PBS
1	\$11,983,495	\$11,668,253
2	5,025,635	7,117,633
3	458,333	1,616,129
4	500,000	347,229

In making its final evaluation, the SSEB concluded that scenario one was the most likely to occur and since PBS had the lowest price for scenario one by \$315,242, the highest aggregate point score by 38 points, and the highest technical point score by 204 points, the SSEB recommended that it would be most advantageous to award the contract to PBS. On April 4, the Army awarded the contract to PBS in the amount of \$4,028,004, which represented PBS's bid on the basic line items.

Ramtech's essential basis for protest is the assertion that the Army's evaluation of proposals with respect to the technical data factor was inconsistent with the description of that factor in the RFP. Ramtech also contends that PBS did not offer the lowest evaluated price.

Regarding the agency's evaluation of technical proposals, we will examine such evaluations to ensure that they are reasonable and consistent with the evaluation criteria. See Wellington Assocs., Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Based on our review of the record, we find that the Army's evaluation was reasonable and consistent with the evaluation criteria. In accordance with the evaluation criteria contained in the RFP, the building design (technical data) was the most important factor evaluated by the SSEB. PBS received 817 points for its design compared to only 613 points for Ramtech's design and was considered superior.

With respect to Ramtech's mechanical design, the SSEB found the heating and air conditioning system design acceptable, although it was not considered an optimal system. The agency concluded that the plenum^{2/} design provided by Ramtech would result in nonuniform outside air distribution throughout the building. The SSEB believed that to correct this problem, the mechanical system would have had to have been redesigned. The SSEB determined that such a redesign would have necessitated a more expensive mechanical system and a substantial addition of ductwork and supply fans to push the outside fresh air across the building.

Ramtech's architectural design was also considered acceptable. The valley design and center gutter system in the building's roof, however, did not meet the intent of the RFP in that the Army's drawings showed an edge gutter system. Ramtech acknowledged in its BAFO that the roof would have been better without the center gutter system.

Likewise, Ramtech's structural design of the facility was considered adequate and workable, but was not considered to be an optimal design. Ramtech's initial structural design had side walls with plywood sheeting as the lateral load diaphragm system. During discussions, the SSEB recommended an x-braced or rigid frame system be used which Ramtech proposed in its BAFO. However, the SSEB questioned the integrity of Ramtech's revised bracing system because of the lack of detail in Ramtech's proposal and Ramtech's failure to provide a written narrative of the operation of the revised system. Thus, the SSEB could not determine the suitability of Ramtech's x-bracing system from its BAFO submissions.

On the other hand, the SSEB determined that the mechanical design submitted by PBS fully complied with the intent of the RFP by properly zoning the heating and air conditioning system and ventilating restrooms and kitchen areas. (The system provided by PBS was the only one of the three proposals to fully comply with the intent of the RFP.) The SSEB considered PBS's roof system to be the best roof possible for the

^{2/} A plenum is a space between two floors designed to allow for air circulation; ductwork is not used to provide specific channels for the air flow.

building and that it fully met the intent of the RFP by providing a roof with a single peak and an edge gutter system. Lastly, PBS provided sufficient details for the SSEB to determine the capability of its proposed design and was found to be in conformance with the requirements of the specifications.

While the record shows that both proposals were considered acceptable, it is also clear that PBS's design was reasonably determined to be superior to Ramtech's.

As stated above, Ramtech also questions the Army's evaluation of its proposal with respect to certain requirements and the agency's alleged failure to conduct discussions in these areas.

Ramtech specifically argues that the Army improperly gave it zero points for its proposed humidification system. Ramtech states that it provided detailed submittal sheets on the humidification system proposed and stated that further information was necessary from the user before the humidifier could be sized.

The Army states that Ramtech did provide information concerning the humidifier it intended to use; however, it did not provide any information concerning the capacity of the humidifier as required by the RFP evaluation criteria.

The RFP specifically required offerors to provide the type and capacity of the humidifier, and Ramtech failed to do so. While Ramtech received zero points for this requirement, this factor was worth a maximum of five points. Thus, even if Ramtech received the maximum points for this factor, PBS would remain the highest rated offeror, and the relative standings of the offerors within the competitive range would not change.

Ramtech also argues that it was improperly downgraded in the technical area for failing to submit a narrative describing its proposed structural system and failing to provide preliminary calculations on wind and seismic loads. Ramtech maintains that it provided a narrative with its proposal and that it also provided preliminary calculations on wind and seismic loads.

The record shows that Ramtech in its initial proposal proposed a structural design that had side walls with plywood sheeting as the lateral load diaphragm system. During discussions, the Army recommended that an x-braced or rigid frame system be used instead. In response, Ramtech changed to a cross bracing system but failed to provide sufficient details to support the integrity of the revised bracing system. The RFP required a written narrative describing the structural system of the

modular building, including the roof and structural floor systems, lateral load resisting system and foundation type, as well as drawings with sufficient detail of structural components. Ramtech failed to provide the required narrative for its revised system and because of this, the Army states that it could not make certain critical assessments of Ramtech's drawings. Consequently, the agency gave Ramtech's BAFO a low score for its structural design.

Likewise, although Ramtech provided the required wind and seismic loads calculations for its original design, it did not provide those calculations for its revised design. In our view, the Army properly downgraded Ramtech in these areas. Without the written narratives or calculations, the Army's evaluators could not determine the suitability of Ramtech's revised proposed bracing system.

Ramtech argues that if the agency thought that a required narrative and certain calculations were missing from its proposal, this should have been a subject of discussions prior to BAFO. Ramtech contends that downgrading its proposal without discussions was arbitrary.

Ramtech revised its structural design in response to a request for clarification contained in the Army's BAFO request. The Army specifically requested all clarification responses to be in sufficient detail to ensure that a proposal receives a fair and complete evaluation in the areas identified. An agency is not obligated to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable offer by a BAFO. See RCA Serv. Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563. Thus, when Ramtech revised its design without providing a detailed explanation of its feasibility, it assumed the risk that its proposed changes might raise questions about its revised design and that it could be downgraded based on inadequate information supporting the revisions.

Also, with respect to its technical evaluation, Ramtech argues that its proposal was improperly downgraded for not depicting connections between the facility frame and foundation. Ramtech maintains that it provided details in its proposed foundation plan depicting the location of plates in the foundation wall and the attachment of these plates to the modular floor perimeter.

During discussions, Ramtech was specifically requested to provide floor to concrete pier connections. Ramtech contends that a series of drawings had been revised in its BAFO to reflect these connections. We have reviewed Ramtech's revised drawings and it is unclear from both the drawings and Ramtech's responses during discussion as to exactly how the

facility frame and foundation are connected. Without additional information, it is difficult to determine from these drawings how and where the facility would be attached to its foundation. We therefore do not find the Army's downgrading of Ramtech's proposal in this area unreasonable.

Finally, Ramtech maintains that the price evaluation was improper. Although Ramtech objects to the fact that the agency determined that the first scenario was the most likely to occur, Ramtech maintains that a more accurate price evaluation would have been to include a combination of the first scenario with either the second or third. Specifically, Ramtech argues that if the government is most likely to return the facility after the last lease period, a proper evaluation would include both the first and third scenarios (lease cost plus average return price) and if the government is most likely to retain the facility after the lease period, the evaluation should include both the first and second scenarios (lease cost plus average purchase price). Ramtech contends that its proposed price is lower under any of these evaluation combinations.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. Here, the RFP did not require award on the basis of the lowest cost, technically acceptable proposal. As previously stated, the RFP provided for award to the responsible and responsive bidder whose offer was determined to be most advantageous to the government. The agency in the RFP specifically reserved the right to accept other than the lowest offer. Of the four stated evaluation factors, price was listed in the RFP as the least important.

The record shows that the agency in its price evaluation took into consideration all four pricing scenarios. However, the Army did not specifically make a cost/technical tradeoff decision because it determined that the leasing option would be the most likely, and probably the only, scenario exercised by the government during the 5-year period, and PBS was both technically superior and lower priced for the scenario. In accordance with the RFP, the Army determined that the quality of the facility was the overriding concern and thus placed the greatest weight on the technical proposals. Although the Army did not make a cost/technical tradeoff decision because of the selection of the leasing scenario, the SSEB did discuss the final disposition of the building at the end of the 5-year contract and concluded that if the government had to purchase the building in the fifth year, that the added 7.7 percent increase in cost was justified for a technically superior product.

Notwithstanding Ramtech's argument that PBS did not submit the lowest price, since the RFP did not provide for award on the basis of the lowest priced, technically acceptable proposal, the agency had the discretion to determine whether the technical advantage associated with PBS's proposal was worth its higher price. See ADI Facilities Management, Inc., B-236122.2, Dec. 12, 1989, 89-2 CPD ¶ 541. Award to a technically superior, higher priced offeror is proper so long as that result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the price difference. Id.

The evaluators found that, in recommending PBS for award, the government would get the best product for the least cost (based on the most likely scenario--the basic package plus a 5-year lease). The evaluators determined that PBS had a technical score significantly superior to the Ramtech proposal and that PBS scored 33 percent more on technical points than Ramtech under the technical design evaluation factor, the most important factor.

We believe the record reasonably supports the Army's view that PBS's proposal was significantly superior to the proposal offered by Ramtech and was consequently the most advantageous to the government price and price related factors considered.

Accordingly, the protest is denied.



James F. Hinchman
General Counsel